

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1803 OF 2018

Irshad Isubba Khan

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Ms.Dipika Gupta and Ms.Dipali Saudagar, Advocate for the Applicant.

Mr.R.M. Pethe, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 8, 2018.

P.C. :

This is an application for bail in connection with C.R. No.108 of 2018, registered with V.P. Road Police Station, Mumbai, which was subsequently transferred to in the Anti Extortion Cell DCB, C.I.D. The offences were registered under Sections 364-A, 365, 342, 323, 387. 120 B of Indian Penal Code and Sections 3, and 25 of Arms Act.

2 The prosecution case is that informant is in business of Import and Export of copper metal. He has registered his company in the name of "Yashvi Impress". The informant was

contacted by one person stating that he is Rahul Jain and offered copper metal for sale. The proposal given by him was attractive, the complainant was induced to accept the same. In pursuant to that the complainant went to Delhi by flight. On reaching Delhi, he was taken to another place under the garb of completion of transaction. He was detained in one premises. Than the accused threatened the complainant to part with an amount of Rs.10,00,000/-. The said amount was parted through Angadia, and, thereafter, the complainant was set at liberty by the accused. FIR was registered against unknown person. Applicant was arrested on 9th September, 2018. Investigation is completed and charge-sheet is filed.

3 Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. The co-accused have granted bail and the applicant is entitled for bail on the ground of parity. Although the applicant was identified in the Test Identification Parade, while identifying, no specific role has been assigned to him. However, statement of the complainant was recorded in pursuant to the Test Identification Parade, wherein he has stated that the applicant is a person who had kept watch on the complainant on the date of incident. It is submitted

that the Test Identification Parade was conducted on 4th October, 2017. While the incident is dated 24th November, 2015, the evidence of Test Identification Parade is defective firstly on the ground that the parade was conducted belatedly and it is difficult to accept that the applicant could be identified after such a gap of time. It is also defective because while identifying, no role has been assigned to the applicant and the statement recorded by the complainant. The said statement is contradictory to the FIR. In the FIR, the complainant has made reference to only one person keeping watch on him who is already arrested and granted bail. In the circumstances, the involvement of the applicant is doubtful and he is entitled for bail. It is further submitted that there is no recovery of any nature from the applicant. It is submitted that although there are two cases pending against him, he was granted bail in the said cases.

4 Learned APP submitted that applicant was arrested on 9th September, 2017 and he was not available earlier. It is further submitted that the applicant was arrested in another offence and his custody was sought in the present case. Learned APP drew my attention to the statement of complainant wherein reference is made to the person armed with rifle keeping watch

on the complainant. There are criminal antecedents against the applicant. The case of the applicant can be distinguished from the persons who are granted bail.

5 I have gone through the charge-sheet. FIR is registered on 28th November, 2018. The informant makes reference to one person keeping watch on the complainant while he was confined in the house on the date of incident. The statement of the complainant recorded on 17th February, 2016, after the Identification Parade indicate that the accused who was identified by him, namely, Irfan Khan, is the person who was keeping watch on him when the complainant was confined in the house on 24th November, 2015. Thus, it is the case of the prosecution that the accused arrested earlier, namely, Irfan Khan, was keeping watch on the complainant. The said accused has been granted bail by the Sessions Court. It is also pertinent to note that the co-accused Munsaid Harun Khan was granted bail by this Court. The other accused Saqib Hynna Khan is granted bail. The applicant's application was rejected by the Sessions Court vide order dated 19th April, 2018. There are criminal antecedents against the persons who are granted bail, but, considering the role attributed to them, applications for bail were

allowed. In the Circumstances, applicant is entitled for bail.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1803 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R. No.108 of 2018, registered with V.P. Road Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report V.P. Road Police Station, Mumbai, on first Saturday of every month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) Applicant shall attend the trial Court on every date of hearing, unless exempted by the Court, for some reasons;
- (v) Applicant shall not tamper with the evidence;

(vi) Applicant shall not leave the jurisdiction of the trial Court without prior permission of the Court;

(vii) Bail Application No.1803 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)